

Chapter 20

A Perspective on Cross–Border Aspects of Insolvency and Implications for Resolution Plans and Recovery

T. Shenbagavalli

Jain University, India

R. Ravichandran

Jain University, India

V. Rakesh

Jain University, India

N. Sathyanarayana

 <https://orcid.org/0000-0002-4185-7751>

Jain University, India

ABSTRACT

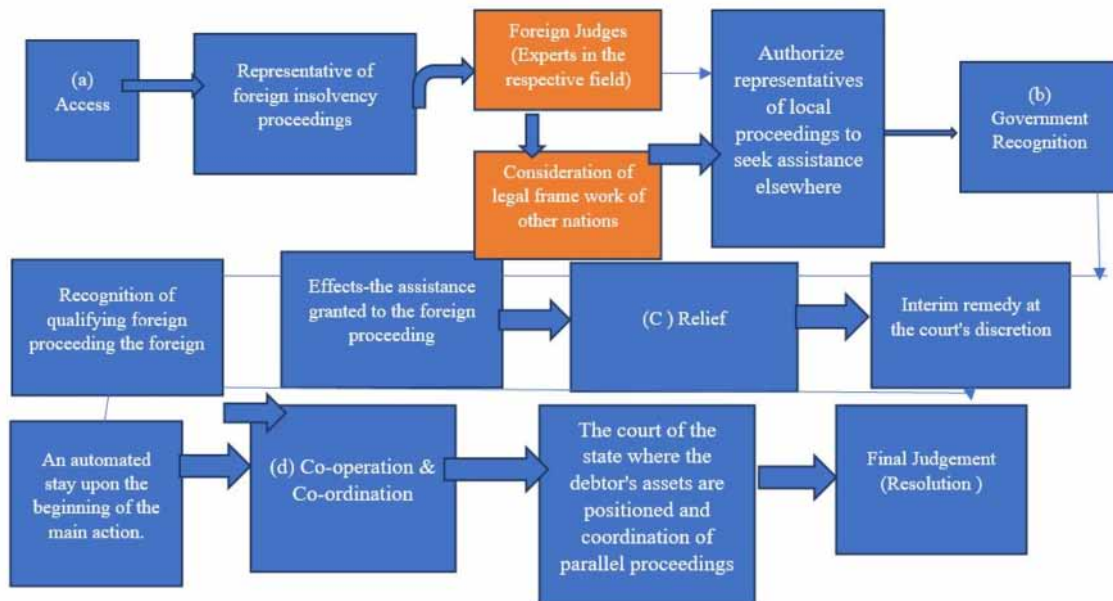
The relevance of data in India’s socio-economic development has been defined in several policy documents in the digital economy. Using Indian law to regulate a contract creates major concerns, which can sometimes compromise it as a negotiating chip in cross-border agreements. As previously stated, Indian courts can revoke foreign arbitral verdicts if they determine that the arbitrators misapplied Indian law. As a result, a party to a contract governed by Indian law risked falling victim to the “public policy” fallacy. This will reduce the interest of foreign investors and create more cross-border issues. Many countries have modified the UNCITRAL model law to avoid such situations according to their requirement. Even the Indian government recently introduced MAP effective from May 6; the same model law was modified to give faster resolution in cross-border disputes under sections 64 and 65 of the Insolvency, Restructuring, and Dissolution Act 2018.

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1. INTRODUCTION

The Concept of Cross border insolvency has been gaining quite an importance in the current global scenario, with many countries vying for FDI into their economy while at the same time trying to leverage their local insolvency laws to recover the maximum possible outstanding dues for the financial system. The issue has become more complex with a variety of regulations rules, and local court jurisdictions involved which is a vital role in deciding the fate of resolution plans which the industries and sectors in an economy need, on a timely basis. In this context, one can say the climate facilitated by the regulations in a country for cross-border insolvency may, to some extent, be regarded as a determining factor in the volume of FDI flowing into a country. In the Digital world, the globalization of business markets creates many changes in the economic system. Due to these system changes, a lot of cross-border trade has increased. As a byproduct of globalization's growth in commerce, numerous advancements are backed by a plethora of FDI through business, all governed by an FDI policy. Since 2017, the sectoral limitations for the single brand retail trade sector under the automatic method have been raised from 49% to 100% (FDI allocated for trading 6%, 100% of equity inflow from April 2021 to March 2022). In the defense sector, the automatic route in dealing with some revision has been increased from 49% to 74%, and the new category of Digital media can have up to 26%, and other sectors like the service sector, 16%, Computer software and hardware 15%, Telecommunication 6%. Even though the Indian government announced a Liberalized Industrial policy in 1990, the business entities follow multiples spiral jurisdiction (Figure 1).

Figure 1. Cross-border issues



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